No. 84-692

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GERALD S. HAWKINS,

Petitioner,

v.

ALEX. BROWN & SONS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

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Attorneys for
Alex. Brown & Sons,
Respondents.

The Daily Record Co., Baltimore, MD 21202

QUESTIONS PRESENTED

I. May a final judgment of the District of Columbia Court of Appeals be reviewed by this Court under 28 U.S.C. § 1257 where neither the validity of a United States treaty or statute nor the validity of a District of Columbia statute was drawn into question and where neither title, right, privilege nor immunity was specially set up or claimed under the Constitution?

II. Were the questions presented by the petitioner raised or preserved below?

III. Where the decision below was based entirely on state law, does this Court have jurisdiction to grant this Petition?

LIST OF PARTIES

Petitioner: Gerald S. Hawkins

Respondents: John P. Rossi

General Partners of Alex. Brown & Sons:

Alexander B. Griswold, Benjamin H. Griswold, III, F. Barton Harvey, Jr., Joseph J. Turner, Norman Farquhar, James E. Holmes, Jr., W. James Price, S. Bonsal White, Jr., R. Gerard Willse, Jr., Clinton P. Stephens, Charles S. Garland, Jr., Robert G. Merrick, Jr., William S. Jeffries, Frederick H. Steiwer, John G. Kovach, George W. Seger, James T. Cavanaugh, III, Ralph A. Cusick, Jr., Clarence Z. Wurts, John C. Pohlhaus, Benjamin H. Griswold, IV, David J. Callard, Truman T. Semans, Edward K. Dunn, Jr., Richard F. Mulligan, Daniel Baker, Frederick M. Bryant, III, Jack S. Griswold, Joseph R. Hardiman, Donald B. Hebb, Jr., E. Robert Kent, Jr., Forrester A. Clark, Robert L. Clark, J. Dorsey Brown, III, Alvin B. Krongard, James B. Stradtner, Stephen D. Barrett, Richard L. Franyo, John M. Nehra, William L. Paternotte, Thomas Schwizer, Jr., Trust under Deed of Trust from Alexander Brown, dated April 4, 1940, Trust under Deed of Trust from Alexander B. Griswold, dated January 1, 1983, Alexander B. Griswold and Benjamin H. Griswold, III Trustees under Deed of Trust of April 4, 1940.

Special Partners:

Richard L. Franyo, William L. Paternotte, Brooks Whitehouse, Jr., Vincent C. Banker, Stephen D. Barrett, Alexander T. Daignault, Jr., John M. Nehra, Benjamin S. Schapiro, Andrew G. Bandelli, Robert J. Monahan, Otis T. Bradley, Alfred J. Elbrick, Charles P. Hutchinson, Jr., Ronald W. Readmond, William R. Rothe, Thomas Schweizer, Jr., Gordon L. Smith, George H. Warner, Lee P. Woody, Jr., James E. Bourne, Richard D. Billera,

Charles A. Garvin, Robert S. Killebrew, Jr., John A. Spilman, IV, Alfred R. Berkeley, III, William P. Bourne, William P. Dietrich, Richard T. Hale, W. Peter Irish, William M. Legg, Deeley K. Nice, Jr., William G. Stewart, Gerit Vreeland, Timothy T. Weglicki, Beverly L. Wright.

Limited Partners:

Alexander Bennington, Alexander B. Griswold, Frank A. Bonsal, Jr., James E. Bourne, Walter W. Brewster, Thomas L. Chatham, Forrester A. Clark, Russell B. Clark, Jerome C. Eppler, Charles C. Fenwick, Sr., Charles C. Fenwick, Jr., John J. Foster, Jr., Edward B. Freeman, J. P. Gabriel, Samuel Hopkins, A. Alfred Laudati, Peter O. Lawson-Johnston, F. Grainger Marburg, J. Creighton Riepe, Gerard C. Smith, Edmund A. Stanley, Jr., Charles L. Stout, Joseph J. Turner, John M. Walker, Philip H. Watts, William M. Weaver, Jr., Dorsey Yearley, Euguent H. Schreiber and Marc P. Blum, Trustees of the Residuary Trust under the will of Morton Abrahams, Trust under Deed of Trust from Lelia Leith Griswold dated February 13, 1968, Leith S. Griswold and Alexander B. Griswold, Trustees under Deed dated February 1, 1955, Residuary Trust under will of William J. Price, III, Residuary Trust under will of Morton Abrahams, Carolyn E. Butler, Betty Griswold Fisher, Trust under Deed of Trust from Alexander B. Griswold dated June 1, 1958, Trust under Deed of Trust from Bessie Brown Griswold, dated December 28, 1936, Clark Family Investment Trust, Estate of Benjamin S. Willis.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW

The Memorandum Opinion and Judgment of the District of Columbia Court of Appeals, decided August 9, 1984, is reprinted as Appendix A. A transcript of the trial court's oral opinion, rendered by The Honorable Tim Murphy of the Superior Court of the District of Columbia on November 4, 1983, is reprinted as Appendix B.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(2) and (3). However, this Court lacks jurisdiction over this case under 28 U.S.C. § 1257 because neither the validity of a United States treaty or statute nor the validity of a District of Columbia statute was drawn into question, and neither title, right, privilege nor immunity was specially set up or claimed under the Constitution.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

The case does not involve any constitutional provisions, treaties, ordinances or regulations.

One statute, 28 U.S.C. § 1257, is relevant to the case and it provides, in pertinent part:

> State courts; appeal; certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1). . . .
>
> (2). . . .
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.
>
> For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

In this case, Gerald S. Hawkins ("Petitioner") sued the general partners of Alex. Brown & Sons and John P. Rossi, a former Alex. Brown sales representative (hereafter "Alex. Brown" or "Respondents") claiming conversion of $45,000 worth of bonds plus accrued dividends which had been in a brokerage account in Alex. Brown's Boston, Massachusetts office. Respondents moved for summary judgment on the grounds that there had been a prior judicial finding that plaintiff's former wife was exclusively entitled to the assets in the account. Following a hearing before the Honorable Tim Murphy on November 4, 1983, the District of Columbia Superior Court granted Respondents' motion for summary judgment. (App. B at 6a). In a Memorandum Opinion and Judgment filed August 9, 1984, the District of Columbia Court of Appeals affirmed the trial court's grant of summary judgment for Respondents. (App. A at 1a, 3a). Petitioner's Petition for Rehearing was denied by the District of Columbia Court of Appeals in a Per Curiam Order filed September 14, 1984.

The brokerage account which is the subject of the present case was maintained in Boston in the names of "MR. GERALD AND MRS. DOROTHY ZOE HAWKINS, JT. TEN." (R. 27). Specifically, plaintiff's claim asserted that the assets in the account were wrongfully transferred by another Massachusetts brokerage firm, H. C. Wainwright & Co., to Alex. Brown as part of a merger (R. 4). The assets had been in an identical joint tenancy account at Wainwright (R. 4). Petitioner further asserted that after the transfer, Respondents wrongfully declined to release the assets to him in Washington, D.C. in a form (such as bearer bonds or a check to his order) which would

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* R refers to the record, T refers to the transcript of the November 4, 1983 hearing on Respondents' summary judgment motion in the trial court, and App. refers to appendices to this Brief in Opposition.

enable him, alone, to keep the assets (T. 14). As damages, Petitioner claimed the value of the bonds, accrued dividends, attorney's fees, lost annual leave and loss of the affection of his daughter arising from his not having contributed to the payment for her college education.

The same assets which were at issue in this litigation were also involved in two prior lawsuits. The first such lawsuit was Petitioner's former wife's suit for divorce and child support which was filed in the Massachusetts Probate and Family Court, and from which no appeal was taken.

Massachusetts had been the marital domicile of Petitioner and his former wife and Petitioner's family remained in Massachusetts when Petitioner took a job and an apartment in Washington, D.C. in 1975 (R. 27, Ex. 17). Thereafter, as the Massachusetts Probate and Family Court found, "difficulties began to develop . . . [Petitioner] began to transfer joint stock to his name only and then transferred it out of Massachusetts. On Thanksgiving Day, November 27, 1977, he abruptly left the marital residence." (R. 27, Ex. 20). Respondents were aware of the Hawkins' domestic difficulties (R. 26) and Respondents had received a letter from Petitioner's former wife in 1977 instructing Respondents not to disburse the assets from their joint brokerage account to Petitioner, who was in Washington, D.C. (R. 27, Ex. 4). Respondents wrote monthly letters to Petitioner and Petitioner's former wife at their separate addresses offering to disburse these assets in any manner to which both parties agreed. (R. 27 Ex. 3). On September 25, 1979 the assets were attached as part of the aforesaid domestic proceeding. (R. 27 Ex. B).

Petitioner was brought into the divorce proceeding on the basis of the Massachusetts long-arm statute. The Massachusetts Court had personal jurisdiction over the Petitioner because it was clear from, *inter alia*, Peti-

tioner's letters to his former wife's counsel and letters to the Massachusetts Probate Court itself that Petitioner had received actual notice of that divorce proceeding (R. 27).

The Massachusetts Court found as a fact that "the parties invested in the Teacher's Pension Fund (TIAA/CREF), life insurance and stocks and bonds; all of which the Husband transferred to Washington, D.C. before or shortly after he abandoned the marital residence on November 27, 1977." (R. 27). In part because the Petitioner had already transferred to himself other jointly held assets, the Massachusetts Court found that Mrs. Hawkins alone was equitably entitled to the assets in the Alex. Brown account and ordered their transfer to her:

> The Trustee, Alex. Brown & Sons, pursuant to an attachment approved by this Court on September 25, 1979, shall transfer to the plaintiff all joint marital assets which the Trustee now holds which consist of (1) Mutual Assistance Corporation of New York Bonds in the amount of $45,000; and (2) cash in the amount of at least $4,612.50
>
> Judgment of Divorce Nisi (R. 27).

The other prior lawsuit involving the assets in the Massachusetts Alex. Brown account was a non-support action filed by Petitioner's former wife in the D.C. Superior Court pursuant to the Uniform Reciprocal Enforcement of Support Act. In that proceeding, before the Honorable Robert M. Scott of the District of Columbia Superior Court, Petitioner claimed that the assets transferred by Alex. Brown to his former wife in accordance with the Judgment of Divorce Nisi should be treated as a credit in his favor partially offsetting his child support arrearages. (Petitioner was seeking the credit for the transfer of these assets before Judge Scott at the same time that he was pursuing a suit against Alex. Brown asserting that he was damaged by the transfer). Judge Scott accorded full faith and credit to the Massachusetts

decree and held that Petitioner had no claim to the Alex. Brown & Sons account since the Massachusetts Court had determined that Mrs. Hawkins was entitled to the funds as part of her equitable share of the marital property. The District of Columbia Court of Appeals affirmed Judge Scott's decision in a Memorandum Opinion and Judgment decided August 13, 1984.[1]

In awarding summary judgment to Respondents in the present case, Judge Murphy considered both of the summary judgment motions filed by Respondents as well as accompanying Exhibits, (R. 13, 114) the Massachusetts Judgment of Divorce Nisi and Findings of Fact (to which he gave full faith and credit) (R. 27), and the opinion of Judge Scott. Additionally, Judge Murphy questioned Petitioner at length regarding the damage sought and fact disputes (T. 42-49). Judge Murphy awarded summary judgment to Respondents on the basis that Petitioner was not entitled to recover as damages the value of the assets in the Alex. Brown account because there had been a prior judicial finding that Petitioner's former wife was exclusively entitled to those funds (App. B at 6a). Further, the Court found that damages consisting of attorney's fees, annual leave, loss of affection, etc. were either too speculative or improper (App. B at 5a-7a).

The District of Columbia Court of Appeals affirmed the trial court's judgment, holding that there was no genuine issue of material fact. The appellate court further held that the Massachusetts Court decision which awarded sole ownership of the claimed assets to Petitioner's former wife, was entitled to full faith and credit. In so holding, the District of Columbia Court of Appeals said that since

[1] Memorandum Opinion and Judgment, District of Columbia Court of Appeals (Nebeker, Belson and Yeagley, Judges), August 13, 1984, *Hawkins v. Hawkins,* No. 83-1362, *affirming* Superior Court of the District of Columbia, Case No. RS 840-79R.

Petitioner "had no legal right to that which he sought" from Respondents, Respondents' "refusal to give it to him cannot have been wrongful." (App. A at 3a).

SUMMARY OF REASONS FOR DENYING THE PETITION

Under 28 U.S.C. § 1257, which exclusively governs this Court's review of final judgments rendered by the highest court of a state in which a decision could be had (including the District of Columbia Court of Appeals), there must be a federal question presented in order to invoke this Court's jurisdiction. In this case, there was no federal question before the District of Columbia courts at any stage of the proceedings below. The Court of Appeals' judgment neither rejected a federal claim nor honored a federal claim, because neither Petitioner nor Respondent presented one. There is no federal question in this case and accordingly, 28 U.S.C. § 1257 does not confer jurisdiction.

The only issues which Petitioner addressed before the District of Columbia's highest court were four allegedly erroneous trial court rulings, each of which involved state law. The four specific questions which appellant-Petitioner raised before the District of Columbia Court of Appeals, in both his brief and his reply brief, are set out in Appendix C and Appendix D, respectively. Neither Petitioner nor Respondents ever raised a federal claim at any stage of the proceedings below. Accordingly, the petition should be denied.

ARGUMENT

I.

THIS COURT DOES NOT HAVE JURISDICTION UNDER 28 U.S.C. § 1257 TO REVIEW THE FINAL JUDGMENT OF THE DISTRICT OF COLUMBIA COURT OF APPEALS IN THIS CASE.

28 U.S.C. § 1257(3) provides that a final judgment of the District of Columbia Court of Appeals may be reviewed by

this Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.[2] There was no question of federal law raised in the state court by either party. Neither party questioned the validity of any statute whatsoever, on constitutional or other grounds, nor did either party claim a right, privilege or immunity of any kind. The District of Columbia Court of Appeals neither considered nor decided any federal questions. Because there is no federal question in the case or in the Court of Appeals' judgment which can be reviewed by this Court, this Court lacks jurisdiction under 28 U.S.C. § 1257 to grant the petition. *See* C. Wright, *Law of Federal Courts* § 107 at 738 (4th ed. 1983).

II.

THE QUESTIONS PRESENTED BY THE PETITIONER WERE NOT RAISED OR PRESERVED BELOW.

The only four questions which Appellant-Petitioner presented to the District of Columbia Court of Appeals in this case were whether his motions (1) for a default judgment, (2) for a new trial and (3) for a judgment notwithstanding the verdict should have been granted, and (4) whether the trial court's grant of summary judgment in favor of Respondents should have been reversed. See Appendices C and D. Even if there were a

[2] Although petitioner also invokes 28 U.S.C. § 1257(2), review of a decision of the District of Columbia Court of Appeals may only be had by writ of certiorari. *Palmore v. United States*, 411 U.S. 389, 93 S. Ct. 1670 (1973); *Key v. Doyle*, 434 U.S. 59, 98 S. Ct. 280 (1978).

substantial federal question in the case, which there is not, that substantial federal question must have been raised in a proper and timely manner in the state courts. *Prune Yard Shopping Center v. Robins,* 447 U.S. 74, 85 n.9, 100 S. Ct. 2035, 2043 n.9 (1980); *Street v. New York,* 394 U.S. 576, 581-85 89 S. Ct. 1354, 1360-62 (1969); *New York ex. rel Bryant v. Zimmerman,* 278 U.S. 63, 67, 49 S. Ct. 61, 63 (1928). The Petitioner's failure to raise a federal question as required will preclude review of the case by this Court. *Edelman v. California,* 344 U.S. 357, 73 S. Ct. 293 (1953); *Barbour v. Georgia,* 249 U.S. 454, 39 S. Ct. 316 (1919); *Mutual Life Ins. Co. v. McGrew,* 188 U.S. 291, 23 S. Ct. 375 (1903). Even if Petitioner had properly raised a federal question in the trial court, which he did not, he would be held to have waived it by failing to preserve it on appeal. *See Beck v. Washington,* 369 U.S. 541, 549-53, 82 S. Ct. 955, 960-62 (1962); *see also* C. Wright, *Law of Federal Courts* § 107 at 745 (4th ed. 1983). It is too late to raise a federal question by petition for rehearing to the state appellate court. *Herndon v. Georgia,* 295 U.S. 441, 55 S. Ct. 794 (1935); *Bilby v. Stewart,* 246 U.S. 255, 38 S. Ct. 264 (1918); *Forbes v. State Council of Virginia,* 216 U.S. 396, 30 S. Ct. 295 (1910). Because Petitioner did not raise any federal points in either the trial court or the appellate court below, the petiton should be denied for want of jurisdiction.

III.

SINCE THE DECISION BELOW WAS BASED ENTIRELY ON STATE LAW, THIS COURT DOES NOT HAVE JURISDICTION TO GRANT THIS PETITION.

In *Herb v. Pitcairn,* 324 U.S. 117, 125-26, 65 S. Ct. 459, 463 (1945), Justice Jackson articulated one of the most important standards governing this Court's ability to review state court judgments:

> "This Court from the time of its foundation has adhered to the principle that it will not review

> judgments of state courts that rest on adequate and independent state grounds . . . Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. . . . [I]f the same judgments would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.*

The District of Columbia Court of Appeals' judgment in this case rested entirely on state conversion law. It held that the undisputed material facts established that Petitioner did not have a right to exclusive possession of the bonds at issue and thus that Alex. Brown was properly granted summary judgment on Petitioner's conversion claim.

In this context, Petitioner's various claims of federal issues are disingenuous. The grant of summary judgment did not deny his right to a jury trial. The trial court properly accorded full faith and credit to a Massachusetts judgment awarding the contested assets to Petitioner's former wife, when that judgment was issued after a proceeding in which Petitioner declined to appear. The District of Columbia *pro hac vice* rule did not impinge on Petitioner's constitutional rights and Petitioner's statutory conversion claim under the Uniform Commercial Code — had it been raised — would have had the same, state law result. Because the District of Columbia high court decided the case exclusively under state law, there can be no review by this Court. *Michigan v. Long*, ___U.S. ___, 103 S. Ct. 3469, 51 U.S.L.W. 5231, 5234 (1983); *Johnson v. New Jersey*, 384 U.S. 719, 735, 86 S. Ct. 1772, 1782 (1966); *McCoy v. Shaw*, 277 U.S. 302, 48 S. Ct. 519 (1928). Any review of the judgment in this case would constitute an advisory opinion, and is thus impermissible.

CONCLUSION

Under the applicable statutory and judicial limitations which govern this Court's review of state decisions, there are compelling reasons for this Court to deny Petitioner's Writ of Certiorari. Under the controlling jurisdictional statute, this Court is without jurisdiction to review the judgment below, because there is no federal question in the case. In addition, the Petitioner did not present a federal question to the court below, and the District of Columbia appellate court rested its decision entirely on state grounds. For these reasons, the Petition for a Writ of Certiorari should be denied.

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Respondents.

APPENDICES

Appendix A

District of Columbia Court of Appeals

No. 83-1455

Gerald S. Hawkins, Appellant

v.

Alex. Brown & Sons, et al., Appellee

Appeal from the Superior Court of the District of Columbia

(Hon. Tim Murphy, Trial Judge)

(Argued July 31, 1984 *Decided August 9, 1984)*

Before NEBEKER and BELSON, Associate Judges, and *YEAGLEY, Associate Judge, Retired.*

MEMORANDUM OPINION AND JUDGMENT

Appellant Gerald Hawkins sued Alex. Brown & Sons, et al., for wrongful handling of an approximately $50,000 account that Hawkins held in joint tenancy with his former wife. The trial court granted summary judgment for Alex. Brown. We affirm.

Hawkins has two major claims against Alex. Brown. First, he argues that the funds were wrongfully transferred to Alex. Brown from H. C. Wainwright & Co. on September 27, 1977. On that date, H. C. Wainwright transferred its retail accounts to Alex. Brown. Hawkins argues that the transfer was wrongful because he did not authorize it. His argument fails as a matter of law. Hawkins has not shown that any damages arose directly from the transfer; rather, the damages he alleges he suffered arose from Alex. Brown's subsequent failure to surrender the assets in the account to him.

Hawkins' second argument arises out of Alex. Brown's assertedly wrongful failure to give Hawkins the assets in the account. After Alex. Brown assumed responsibility for the account in September 1977, Hawkins demanded that Alex. Brown give him the assets. Between his first demand and September 25, 1979, Alex. Brown refused to relinquish the funds because the account was a joint account and Hawkins' wife had not concurred in his demand for sole possession of the funds. On September 25, 1979, the Probate and Family Court of the Commonwealth of Massachusetts attached the assets in connection with Hawkins' wife's suit for divorce. In January 1981 that court awarded the wife all possessory rights in the account.

Alex. Brown committed no legally cognizable wrong in failing to give Hawkins the funds in the account, because there is no record evidence that Hawkins had the right to sole possession of the assets. The affidavit of one of Alex. Brown's general partners shows that Alex. Brown required a written joint account agreement signed by both joint tenants in order for either tenant to direct transactions on his or her own. The affidavit states, and there is no evidence to the contrary, that Alex. Brown requested but never received the authorization. In fact, Mrs. Hawkins expressly directed that Alex. Brown not disburse funds to her husband. Thus, Mr. Hawkins never became entitled to receive the funds.

After September 25, 1979, the situation became even clearer: on that date, the Massachusetts court attached the assets. Thereafter Alex. Brown had no power to transfer the assets to Mr. Hawkins. The Massachusetts court decision, which ultimately awarded sole ownership of the assets to Mrs. Hawkins, is entitled to full faith and credit by this court. *Varone v. Varone,* 296 A.2d 174, 177-78 (D.C. 1972); *see Rosser v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 276 A.2d 234 (D.C. 1971).

There is no genuine issue of material fact. On the facts that the movant for summary judgment, Alex. Brown, set forth, and in the absence of a contradictory showing by

Mr. Hawkins, it is clear that Alex. Brown is entitled to judgment as a matter of law. Hawkins had no legal right to that which he sought, so Alex. Brown's refusal to give it to him cannot have been wrongful. Under Super. Ct. Civ. R. 56(c) and our precedents, such as *Nadar v. de Toledano*, 408 A.2d 31, 41-42 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980), summary judgment was proper.[1] Accordingly, it is

ORDERED and ADJUDGED that the judgment on appeal be, and it hereby is, affirmed.

FOR THE COURT,

RICHARD B. HOFFMAN,
Acting Clerk of the Court

[1] Hawkins contends that the fact that Alex. Brown's attorney at the summary judgment hearing was not a member of the D.C. Bar entitled him to a default judgment. The trial judge who presided at the summary judgment hearing had previously accepted the appearance of the attorney. The trial judge had the authority to waive the requirement that a D.C. Bar member accompany the attorney to all proceedings. Super. Ct. Civ. R. 101(a)(3). In light of his previous acceptance of her appearance and of the failure of Hawkins to object at the summary judgment hearing, we deem the trial judge to have waived the requirement.

APPENDIX B

Superior Court of the District of Columbia

Civil Division

Civil Action No. 10154-81

Hawkins, Plaintiff,

v.

Alex. Brown & Sons, et al., Defendants.

Washington, D.C.

November 4, 1983

The above-entitled action came on for a hearing before Honorable Tim Murphy in Courtroom No. 41.

Appearances: Plaintiff Hawkins, Pro Se; Debra Jennings, Esquire, on behalf of the Defendants.

(52) (The Court) During the Court's recess, the Court has reviewed the file. The Court this morning read most of the entire file again and refreshed the Court's recollection of this is one of some seven hundred motions I've had during a three-month period, so I don't remember all of them, but having reread most of the file this morning, early this morning and re-reviewing it plus reading the law and having the benefit of argument, there are certain matters that I have concluded at this point in time. One of the reasons I re-examined the Complaint in light of the pretrial order, it appears to the Court that this is essentially a case for conversion.

The gentleman alleges that stocks that were his that they had initially properly were converted to their own use for purposes of interest, use of the money, or they

wouldn't give them to him. And this sounds, although the labels are different in the actual Complaint and it's a little hard to put the legal label on Judge Hannon's Order, but the challenge in Judge Hannon's Order of the allegation of the theory was the transfer to Wainwright without (53) authorization, the failing to do anything about it, the failing to honor his request to close the account and the failing to turn the property over to him, which ultimately went out to his former wife under the Massachusetts Court Order, and that they had no authority to do what they did.

It strikes the Court that this is essentially a case sounding in the tort of conversion. This is a willful tort.

Now, interestingly enough, the law of conversion, there's a case that involves Senator Dodd and Drew Pearson, *Pearson versus Dodd in the District of Columbia,* in which the Court stated the most distinctive feature of conversion is the measure of damages which is the value of the goods converted. Because of this stringent measure of damages, it's long been recognized that not every wrongful interference with personal property of another is a conversion, but the Court is satisfied there's prima facie on allegation of conversion here. The Court is also satisfied, based on the record before it and Mr. Hawkins' own statements, that he can make out no measure of damages other than that of the value of the property, and the value of the property was the value when it was seized or somehow taken (54) control of by the Massachusetts Courts.

The law is that nominal damages on conversion are proper even if the property has no value under the case in which there were bonds that weren't any good. But we need not reach that issue here in the District of Columbia because the *Camalier and Buckley* case at *168, U.S. App. 149* says punitive damages are allowable even if there are no actual damages. On the record before the Court, I'm satisfied that there is no evidence before the Court which allow other than speculation as to whether there was any

actual damages in this case and the question is, are punitive damages authorized.

Now, punitive damages are not favored in the law and punitive damages are awarded to punish and deter outrageous conduct, and the question is whether the Defendant's conduct contains elements of intentional wrongdoing or conscious disregard for the Plaintiff's rights. This is taken from the case of *Kippen versus Ford Motor at 178 U.S. Appeals 227.* Normally, punitive damages are not available for a tort action arising out of contract without a showing of actual malice. Now, whether a conversion is a tort arising out of a contract action is something I haven't figured out yet.

(55) The elements of punitive damages in the District require generally fraud, ill will, reckless, wantonness or willful disregard for rights. We instruct the jury as follows: You may award punitive damages only if you find the act or acts of the Defendant or Defendants were malicious in willful, wanton and reckless disregard of the Plaintiff's rights. Malice or wrongful motive is a state of mind and may be proven by circumstantial evidence or inferred from direct evidence proven by statements, oral, written or otherwise. Taken from 16-1, punitive damages, Defendant not a corporation.

Subjecting the entire record to this case, Mr. Hawkins, the Court finds as a matter of law that you cannot establish punitive damages in this case and, therefore, grants the motion for summary judgment.

This is a matter that you have the ability and the skill to ulitmately resolve on appeal, and I suggest you ask the Court of Appeals to review the Court's decision in that regard, but the decision is based on a review of the Court's earlier decision which was reconsidered, in the light of the ruling of Judge Scott which only inferentially affects what the Court is doing, but the Court is also — has also ruled (56) as to the full faith and credit as to the Massachusetts judgment. The Court finds that there's no issue as to the actual damages because there was no evidence of loss and

that the punitive damages, based on the files and records before the Court, you could not by the requisite test submit that issue to a jury.

The issue about the loss of affection of your child would be, in the Court's view, an element of punitive damages, not actual damages; however, the Court's ruling on the issue of punitive damages moots out the question of actual damages, but I can't find a case on it. But I would think that if you suffered the loss of the affection of your child based on conduct that would constitute punitive damages, that would be clearly a recoverable item of proof.

So the Court grants the motion, and if the Court of Appeals rules me wrong, well, I'll be happy to hear the case.

Thank you very much.

APPENDIX C

A Statement of the Issues Presented for Review

The sixteen errors cited in appellant's Civil Appeal Statement (page 2) are incorporated by reference and are grouped with argument under the issues below.

1. The trial Court erred in denying Gerald Hawkins's motion for a default judgment in that good grounds were established in the pleadings and in open Court (Record 146).

2. The Honorable Lower Court erred in denying Gerald Hawkins's motion for new trial in that it was an abuse of discretion for the Honorable Judge Tim Murphy to try the facts, thus denying Gerald Hawkins his right to jury trial, and to permit substantial irregularities to invade the judicial process.

3. The Honorable Court of Appeals should uphold Gerald Hawkins's points for a directed verdict by reconsidering the Lower Court's denial of Gerald Hawkins's motion for judgment notwithstanding the verdict.

4. The verdict of summary judgment on all counts for Alex. Brown & Sons et al. should be reversed because there were disputed facts, because there were issues remaining to be tried, and because incorrect legal standards were applied. Further, based on the opinion of the Lower Court, summary judgment should have been awarded to Gerald Hawkins at least on the question of conversion, and the damages thereon, whether nominal or substantial, determined by jury.

Whereas, a single *error* is sufficient for the Honorable Court of Appeals to act on, the appellant encountered multiple errors in the Lower Court and addressed them severally in vigorous defense of his rights in this brief.

APPENDIX D

REWORDING OF THE ISSUES BY APPELLEES IS PREJUDICIAL

The statement of issues filed under 830145 is not consented to, and appellant's issues are reaffirmed (BA 4).

1. Was a default judgment for $295,905 to a pro se denied erroneously, and did Ms. Jennings misrepresent her status?
2. Was a New Jury Trial denied erroneously?
3. Was a judgment notwithstanding the verdict erroneously denied?
4. On summary judgment, were there material issues of fact, and issues remaining to be tried, and were incorrect legal standards applied, and should the jury have determined nominal or other damages on the Lower Court's finding of a prima facie on allegation of conversion?

Jurisdiction invoked: D.C. Code 1973 as amended: Acts of Congress; U.S. Constitution.

Pursuant to Supreme Court Rule 15 and 21, the questions presented above are deemed to comprise every subsidiary question reviewable on Writ of Certiorari and fairly included therein. Notice is given of Federal Questions in this appeal, (GRDCCA 48).